

**APPROVED MINUTES
SUNNYVALE CITY COUNCIL
TUESDAY, APRIL 8, 2008**

5 P.M. SPECIAL COUNCIL MEETING (Closed Session) - Public Employee Informal Performance Evaluation, City Attorney, Pursuant to Government Code Section 54957

6 P.M. SPECIAL COUNCIL MEETING (Study Session) - City Manager Recruitment

7 P.M. REGULAR MEETING

SALUTE TO THE FLAG

Mayor Spitaleri led the salute to the flag.

ROLL CALL

PRESENT:

Mayor Anthony Spitaleri
Vice Mayor Melinda Hamilton
Councilmember John Howe
Councilmember Otto Lee
Councilmember Ron Swegles
Councilmember Christopher Moylan
Councilmember David Whittum

ABSENT:

None

STAFF PRESENT:

City Manager Amy Chan
Assistant City Manager Robert Walker
City Attorney David Kahn
Director of Finance Mary Bradley
Director of Community Development Hanson Hom
Director of Public Works Marvin Rose
Director of Public Safety Don Johnson
Director of Employment Development Michael Curran
Transportation and Traffic Manager Jack Witthaus
Principal Planner Gerri Caruso
Administrative Analyst Maria Rodriguez
City Clerk Gail Borkowski

CLOSED SESSION REPORT FOR APRIL 8, 2008

Vice Mayor Hamilton reported that Council met in closed session earlier this evening pertaining to: public employee informal performance evaluation, city attorney, pursuant to Government Code section 54957

Vice Mayor Hamilton reported that no direction was given and no action was taken.

SPECIAL ORDER OF THE DAY – Proclamation for the Month of the Child: recognition of child care providers and centers.

SPECIAL ORDER OF THE DAY – Proclamation for National Volunteer Week.

PUBLIC ANNOUNCEMENTS

Vice Mayor Hamilton announced the City's continuous board and commission recruitment.

Vice Mayor Hamilton announced NASA will be holding an outreach meeting on April 10, 2008, at City Hall.

Josh Salans, Volunteer Executive Director of Sustainable Community Gardens, announced an Earth Day weekend celebration on April 19 and 20. Salans stated the Charles Street Gardens will hold their annual plant sale and Full Circle Farm will host Earth Day celebrations.

CONSENT CALENDAR

Councilmember Whittum pulled Items 1.C. and 1.H.

Councilmember Swegles pulled Item 1.L.

Councilmember Howe pulled Item 1.D.

Vice Mayor Hamilton moved, and Councilmember Howe seconded, to approve the Consent Calendar with the exception of Items 1.C, 1.D, 1.H, and 1.L.

VOTE: 7-0

1.A. Approval of Information/Action Items – Council Directions to Staff

Fiscal Items

**1.B. RTC 08–104 List of Claims and Bills Approved for Payment by the City Manager
– List No. 395**

Staff Recommendation: Council reviews the attached list of bills.
418

Contract Items

**1.C. RTC 08–111 Authorization to Modify an Existing Contract for Property
Management Services (F0703-81)**

Councilmember Whittum stated he pulled this item due to his concern about extending the lease terms. Councilmember Whittum explained that he is not objecting to the extension, rather he is suggesting that guidance be given to staff. Councilmember Whittum stated since this is a potential park site, the lease term should not extend past June 2009.

Councilmember Howe questioned if it is appropriate for Council to give direction on the length of the lease since this item has been noticed only for the existing contract and not the length of the lease. City Attorney David Kahn agreed that further direction would need to be placed on a future agenda as the issue this evening is whether or not to approve the contract.

Councilmember Whittum stated it would be appropriate to have a discussion on the interaction between this property and other studies. Councilmember Whittum stated his concern that others may be making choices, acting on the City's behalf, which could constrain Council's choices.

Vice Mayor Hamilton asked staff if it is City policy to not sign a lease extending beyond June 30, 2010, for this site. Director of Public Works Marvin Rose stated staff identifies revenue through July 1, 2010, and theoretically a lease could extend out an additional year into 2011. Director Rose explained that the City tends to have leases shorter in nature because of the type of facilities. Director Rose explained that Council could take action in the future to change the FY 2010/11 lease date and change how leases are structured.

Public hearing opened at 7:26 p.m.

Public hearing closed at 7:26 p.m.

MOTION: Councilmember Howe moved, and Vice Mayor Hamilton seconded, to approve staff recommendation: Council authorizes modification of an existing contract with GS Commercial Management Incorporated, in substantially the same form as the attached draft change order, by increasing the current \$55,000 contract to \$75,000.

Councilmember Howe stated nothing in the motion is meant to extend the contract; however, the motion approves the oversight which is needed.

VOTE: 6-1 (Councilmember Whittum dissented)

1.D. RTC 08-105 Award of Request for Proposals for Financial Auditing Services (F0712-60)

Councilmember Howe stated he pulled this item in order to make a slight change to length of the contract and the intent.

Vice Mayor Hamilton asked, should a one-year extension be added to this contract, would that create a problem for the financial auditing firm. Director of Finance Mary Bradley stated the firm understands that the two one-year extensions would be subject to negotiation. Director Bradley clarified that this contract is for the annual audit of the City's financial statements required by the Charter, not the performance audits.

Vice Mayor Hamilton inquired as to the meaning of the "rotating coverage of sensitive areas" section mentioned in the report. Director Bradley explained that it is essentially additional services, such as additional audits.

Public comments opened at 7:26 p.m.

No speakers.

Public comments closed at 7:26 p.m.

Councilmember Howe inquired whether staff has negotiated a contract with this firm pending Council approval. Director Bradley explained that the firm Maze & Associates

made a proposal to the City which staff is recommending Council approve, based on the responses to the request for proposals received.

Councilmember Howe inquired why the contract includes two additional one-year terms. Director Bradley stated the Government Finance Officers Association recommends that an external audit contract be set at a minimum of five years due to the start up costs and in order to allow the firm to fully understand the financial situation. Should the contract be too short, things could be missed. Director Bradley stated the Government Finance Officers Association also recommends that cities bid from time to time to make sure they are receiving the proper services.

MOTION: Councilmember Howe moved, and Councilmember Lee seconded, to approve Alternative 1:

- Council awards a five-year contract to Maze & Associates to provide financial auditing services.

Councilmember Howe stated in five years Council should review this contract prior to issuing any further extension.

Vice Mayor Hamilton stated she will not support the motion, although she agrees with the idea of Council review. Vice Mayor Hamilton stated that allowing the city manager to exercise her discretion would prevent the City from having to put the contract out to bid again. Councilmember Howe responded that staff would have the option to return to Council and recommend an extension at any time.

Councilmember Howe requested that the motion be adjusted slightly in order to add that the review would be without prejudice. Councilmember Howe stated that Council could choose to extend the contract, but it would be important for Council to review the contract again in five years.

Vice Mayor Hamilton verified with staff that Councilmember Howe's motion would not require that staff go out to bid again unless Council requested staff do so. Director Bradley explained that services do not require a competitive bid process. Director Bradley stated staff would need to bring any recommendation to extend a contract to Council prior to the end of the five-year term in order to allow for a bid process, should Council not want to extend the contract.

Councilmember Moylan inquired if Alternative 2 would alleviate Councilmember Howe's concerns by replacing the city manager text with City Council. Councilmember Howe agreed Councilmember Moylan's suggestion would address his concern, but he would like staff to have the flexibility to return to Council with their recommendation. Councilmember Howe stated he is requesting that Council have oversight of financial issues and Alternative 2 would remove options for staff to recommend to Council.

Restated MOTION: Councilmember Howe moved and Councilmember Lee seconded to approve Alternative 1:

- Council awards a five-year contract to Maze & Associates to provide financial auditing services

with

without prejudice.

VOTE: 7-0

1.E. RTC 08–107 Award of a Contract to Design and Prepare Construction Documents for the Rehabilitation of Four Air Flotation Thickeners at the Water Pollution Control Plant (F0711-50)

Staff Recommendation:

- Council awards a contract, in substantially the same form as the attached draft and in the amount of \$403,100, to RMC Water and Environment for design and the preparation of construction documents for the rehabilitation of four air flotation thickeners at the Water Pollution Control Plant; and
- Council approves a design contingency in the amount of \$60,465.

1.F. RTC 08–112 Award of Contract for Maintenance and Support for the Public Safety Dispatch and Records Management Systems (F0703-76)

Staff Recommendation:

- Council awards a one-year contract to Tiburon Incorporated, in an amount not to exceed \$96,580, to Tiburon Incorporated, for software maintenance and support; and
- Council delegates authority to the city manager to exercise an option to extend the contract for two additional one-year periods if it is in the City's best interest.

1.G. RTC 08–095 Approve an Exclusive Negotiating Rights Agreement (ENRA) between the City and Mid-Peninsula Housing Coalition as the Developer for An Affordable Senior Housing Project at 660 S. Fair Oaks

Staff Recommendation: Council approves an Exclusive Negotiating Rights Agreement between the City and Mid-Peninsula Housing Coalition as the developer for an affordable senior housing project at 660 S. Fair Oaks.

1.H. RTC 08–109 Award of Request for Proposals No. F0708-24 for Long Range Facilities Planning Services and Approval of Budget Modification No. 46

Councilmember Whittum stated this study is premature and could wait until after the budget cycle, Park of the Future study, and also after the City is able to obtain a clear picture on the economic conditions. Councilmember Whittum stated he does not see any harm in postponing this item.

Public comments opened at 7:33 p.m.

No speakers.

Public comments closed at 7:33 p.m.

Mayor Spitaleri inquired if this study would include City Hall facilities. Assistant City Manager Robert Walker verified the study would look at the City Hall complex as well as the other City facilities, minus a couple which are conducting their own studies.

MOTION: Vice Mayor Hamilton moved, and Councilmember Howe seconded, to approve Alternative 1: Council awards a contract to Carter Goble Associates Incorporated, in substantially the same form as the attached draft and in an amount not to exceed

\$195,880, to provide long-range facilities planning services, and approve Budget Modification No. 46.

Vice Mayor Hamilton stated this item was brought before Council two years ago in a budget report. Vice Mayor Hamilton acknowledged the City does not currently have the money to move forward on many items; however, the sooner the planning process is able to start, the better Council will be able to plan for the future. It is important to have a coherent plan on how to better utilize the City's resources overall and this is an essential study.

Councilmember Whittum expressed his concerns over the expense for this study.

VOTE: 6-1 (Councilmember Whittum dissented)

Other Items

- 1.I. RTC 08–087 Resolution Authorizing Destruction of Certain Documents Pertaining to Citizen Complaints/Inquires, Internal Investigations, Applicant Backgrounds for Non-Hires, Officer Involved Vehicle Collisions, Canine Unit Training and Deployment Records, Inactive Carry Concealed Weapon (CCW) Permit Documentation, Mobile Video Recorder Tapes, Communication Tapes, Digital Images and all Other Routine Audio and Video Monitoring Eligible for Destruction**

Staff Recommendation: Council approves the resolution allowing for the destruction of specified records and recordings from the Department of Public Safety.

- 1.J. RTC 08–108 Request to Revise Performance Measures in the FY 2007/08 Approved Budget for Department of Employment Development**

Staff Recommendation: Council approves modifications of performance measures for FY 2007/08.

- 1.K. RTC 08–101 Authorization for NOVA to Apply to U.S. Department of Labor for Science, Technology, Engineering, and Mathematics (STEM) Initiative Funding in an Amount not to Exceed \$2 Million**

Staff Recommendation: Council authorizes the submission of a proposal to the U.S. Department of Labor for a STEM initiative grant in an amount not to exceed \$2 million.

- 1.L. RTC 08–102 Authorization to Award Contract in the Amount of \$460,000 to Vietnam Veterans of California for Veterans Employment – Related Assistance Program**

Councilmember Swegles stated he pulled this item to mention that the \$460,000 is not coming out of the City's General Fund. Councilmember Swegles stated the City has a special fund set aside for this project. Director of Employment Development Michael Curran explained that this is a competitive grant that was submitted to the Department of Labor and the State of California in December, and the funding is coming from these sources to provide the services.

Public hearing opened at 7:38 p.m.

No speakers.

Public hearing closed at 7:38 p.m.

MOTION: Councilmember Swegles moved, and Councilmember Howe seconded, to approve Alternative 1: Council authorizes the award of a contract in the amount of \$460,000 to Vietnam Veterans of California to provide services for the Veterans Employment – Related Assistance Program.

VOTE: 7-0

**1.M. ORDINANCE Adoption of Ordinance No. 2869-08 Awarding Nonexclusive
No. 2869-08 Franchise to Amritpal Singh Doing Business as A-1 Cab Company**

Staff Recommendation: Council approves the second reading of Ordinance No. 2869-08.

STAFF RESPONSES TO PRIOR PUBLIC COMMENTS

None.

PUBLIC COMMENTS

Marshal Morse, representing Morse Park Neighborhood Association and New Hope International Church, spoke in support of the proposed Morse Park and urged Council not to move the development of the park area on Morse Avenue to the unfunded list.

Milina Jovanovic asked Council to take a stand against the planned aerial spraying of pesticides over the bay area. Jovanovic stated more than 30 cities across the Bay Area have adopted resolutions opposing the spraying. Jovanovic spoke of health issues that arose from the spraying that occurred in Santa Cruz and Monterey counties. Jovanovic stated protection of California's agriculture is the reason that has been cited for why aerial spraying is necessary. Jovanovic identified that the moth in question, or any other insect, will come back, so spraying is not a solution. Jovanovic urged Council to join other cities who oppose aerial spraying.

Josh Salans stated he has done research on the light brown apple moth, which has been identified as a threat to California's agriculture. Salans explained that the moth comes from Australia and has been in California for over 20 years. Salans stated he verified with the Santa Clara County Agriculture Department that no farms have reported any damage from this moth. Salans asked Council to stand up and say that they do not want spraying to occur over the people of this region.

Harriet Rowe asked Council to request that any changes to staff reports or documents have the changes highlighted through strikeouts and underlines.

Rowe requested Council start planning now for the future due to the complexity of future problems and the increasing growth within Sunnyvale.

Rowe requested Council identify which policies have legal implications versus City Council policy.

Rowe requested recognition of travel inconveniences and authorize telephones and autos for limited use when off duty during travel. Rowe stated Councilmembers are executives and should be treated as such.

Rowe requested City manuals include a table of contents, index and a glossary, as this would assist the public in reviewing documents and allow for quick reference.

Arthur Schwartz requested Council consider a proclamation opposing aerial spraying. Schwartz stated he is a chemical engineer and has previously done much work in the farming areas on environmental issues. Schwartz stated he can attest to the fact that there is not any reason for this spraying to occur. Schwartz stated it is not only a waste of taxpayer money, but spraying is also a threat to everyone's health. Schwartz requested Council place an item on the agenda to consider a proclamation against aerial spraying.

Councilmember Lee stated it appears that various cities have passed resolutions against aerial spraying. Councilmember Lee questioned the city attorney whether Council should place something on the agenda regarding this issue because the City does not actually do the spraying, or would staff be able to get back to Council. City Attorney Kahn responded that if Council chooses to oppose the spraying, then the appropriate action would be for Council to request that staff develop a resolution and then place the item on the agenda for Council consideration and adoption.

Arthur Schwartz added that aerial spraying affects the food supply.

Councilmember Lee inquired as to the amount of time it would take staff to develop a resolution. City Manager Chan explained that since Council does not have a policy on this item, staff would need to develop a policy for Council consideration. City Manager Chan explained that the City does not develop resolutions which take positions on specific issues. City Manager Chan further explained that once a policy position is established and adopted by Council, then the mayor may send a letter expressing Council's position.

City Manager Chan stated the director of public works is currently looking into this issue and will return to Council with an update in a few weeks. City Manager Chan stated after discussing this issue further with staff, she will return to Council with an informational update.

PUBLIC HEARINGS/GENERAL BUSINESS

2. RTC 08-103 Tasman/Fair Oaks Area Parking Issues

Transportation and Traffic Manager Jack Witthaus presented the staff report.

Councilmember Whittum asked if Alternative 2 (...close bike lanes and allow parking in bike lanes in the vicinity of the Hindu Temple during temple special events...) was not selected, would staff be able to take such action on their own. Manager Witthaus explained that the Municipal Code is unclear as to whether staff has the ability to temporarily lift the restriction against parking in bike lanes at this location.

Councilmember Swegles stated it would be difficult to enforce Alternative 2, as most events are on the weekend, which is when the majority of bike riders are using the lanes.

Councilmember Swegles explained that attendance at special events held at the temple average 600 people; however, previous events have had up to 10,000 in attendance.

Manager Witthaus agreed and stated that the temple is conditioned to no more than 600

people at an event over the course of the entire day, but there have been instances in which there have been over 10,000 visitors at an event.

Councilmember Swegles stated another concern is if parking is allowed in the bike lanes, then people will walk in the middle of the street to get to the event, which creates another concern. Manager Witthaus agreed and stated that change in parking locations would create an unsafe situation.

Councilmember Lee verified with staff that using the bike lanes for parking would allow 68 additional parking spaces.

Vice Mayor Hamilton inquired if the situation at the Danbury Place development has been corrected, or are the parking spaces still taken over by guest parking. Principal Planner Gerri Caruso stated the project meets the amount of parking as required by code. The condition of approval when the special development permit was approved required that all unassigned spaces should be available for guests or as additional residential parking, which seemingly gave the homeowner association (HOA) options. Caruso stated the association is currently marking all their spaces as guest parking. Caruso explained that staff has received information from their management association that they are putting forth ideas to their residents, but nothing has changed at this point. Vice Mayor Hamilton verified that the association cannot charge, lease or rent spaces, and staff forwarded a letter to the association reminding them that they could charge only minor fees to manage parking, but they could not charge or lease parking spaces. Vice Mayor Hamilton verified that staff is not aware if the association is charging any fees for managing parking.

Public hearing opened at 8:03 p.m.

Jim Griffith, President of the Sutton Place Homeowners Association, stated his HOA shares some of the same concerns as Danbury Place. Griffith stated expecting the HOA to correct this problem is a poor policy. Griffith explained that the Danbury Place Association's Covenant, Condition, and Restrictions (CC&Rs) state that the parking shall be guest parking only. Griffith stated it is unfair for the City to expect the Danbury Place Association to pay for amending the CC&R's. Griffith suggested the City develop a list of management companies and HOA contacts and have staff hold initial meetings with new HOAs as a means to establish expectations, and then revisit with them on a five-year cycle.

Councilmember Lee inquired as to who was contacted on this item, and Manager Witthaus responded that the homeowner associations and the Hindu Temple were notified prior to the Bicycle and Pedestrian Advisory Commission meeting and tonight's Council meeting.

Vice Mayor Hamilton and Griffith had a discussion over parking enforcement at Sutton Place and Danbury Place.

Councilmember Swegles inquired if Sutton Place's HOA is a member of a community neighborhood group, and Griffith stated they are located between many neighborhood groups but have not been accepted by any.

Councilmember Swegles inquired if the development was required to have two outside parking spaces and a two-car garage. Director Hom explained that the conditions required that the HOA would not be able to charge for parking and must have handicapped parking

available for residents' use. Director Hom stated staff recommended to the Danbury Place HOA that they provide a mix of guest and unassigned homeowner parking and the HOA is currently working with their members on the proper mix of parking to have at their complex. The City is not requiring the HOA change their CC&Rs.

Councilmember Swegles verified with staff that Morse Avenue could accommodate parking on both sides if the bike lanes were eliminated; however, that would create an unsafe environment for bikes and in addition, people would have to walk in the street as there are not any sidewalks. Transportation and Traffic Manager Witthaus explained that there is a project currently in design to construct sidewalks in this area.

A discussion ensued between Griffith, Councilmember Moylan and Mayor Spitaleri regarding Sutton Place and Danbury Place parking issues.

Councilmember Swegles disclosed he works for a management company within 500 feet of Danbury Place, but he does not own any property in this area.

Leonard T. Meyers Jr., newly-elected President of Danbury Place Homeowners Association, explained that the two biggest concerns at this development are parking issues and trash. Meyers requested Council listen to the homeowners and assist the HOA with some guidance.

Councilmember Lee discussed with Meyers that the Danbury Place parking area is being used by some employees of the nearby business complex.

Vice Mayor Hamilton inquired why a guest of Meyers parked on the street if all the spaces in the complex are designated as guest parking. Meyers stated the spaces are not marked as guest parking because he is in a new section of the complex.

Vice Mayor Hamilton verified with Meyers that the HOA covers the entire complex, all phases.

Vice Mayor Hamilton inquired if Meyers was aware that the CC&Rs require guest parking only and if so, what would be required to change that requirement. Meyers stated the HOA is treating all of the parking as guest parking; however, he is currently reviewing the CC&Rs in detail. Meyers stated the homeowners have discussed having a lottery for those owners who have three vehicles.

Councilmember Howe inquired if Meyers has a contact with the City to obtain information. Meyers stated he would like to invite Council to attend the association's quarterly meetings.

Councilmember Howe asked the city manager to consider giving Meyers a staff contact that could potentially assist him.

Councilmember Swegles informed Meyers that there is street parking available on Morse Avenue.

Patrick Mahoney, Danbury Place resident, stated the CC&Rs call for unassigned spaces and also guest parking. Mahoney spoke of the history of the parking issues at Danbury Place from two years ago and stated that no resolution has been reached. Mahoney stated he is in favor of trying the option of dividing the parking spaces as half for guests

and half as unassigned spaces, which would provide 41 spaces for each. Mahoney stated the parking subcommittee of the HOA has expressed that empty parking spaces increase the value of the complex. Mahoney expressed his frustration with being forced to park on the street when there are empty spaces in the parking lot.

Councilmember Moylan stated staff explained that the conditions of approval for this development grant were that the HOA would have the flexibility to have a mix of guest and resident parking. Councilmember Moylan explained that per the conditions of approval, the HOA has the choice to have 100 percent guest parking which would not be a violation of the conditions and, therefore, the City does not have leverage to make any changes.

Councilmember Moylan verified that it is Mahoney's contention that the HOA is violating the conditions of approval. Mahoney stated that the Sunnyvale Municipal Code calls for a percentage of unassigned and guest parking spaces.

Councilmember Moylan stated the issue is really whether the City actually has any leverage at all, or if it is within the HOA's purview to make that decision.

Mahoney suggested the City send a firm message to the HOA suggesting they try to divide the parking spaces as half guest and half unassigned. Councilmember Moylan verified that Mahoney is not requesting the City reconfigure the streets or close the bike lanes.

Councilmember Whittum inquired if the view of the residents at Danbury Place is that there should be a 50/50 mix of parking, and Mahoney responded that it is unanimous among the residents that there should be some change.

Dixie Richards stated she agrees with Mahoney's comments. Richards inquired as to what time of day the parking study was done by City staff. Manager Witthaus stated the study was done twice, one in the morning and then again in the evening, around 8 or 9 p.m. Richards explained that contrary to the results of the study, she is not able to find available parking when she comes home in the evening around 9 p.m.

Richards stated a previous speaker mentioned that the CC&Rs would have to be amended in order to allow resident parking and she questioned why the CC&Rs did not require an amendment when guest-parking-only was instituted. Richards stated over a year ago she went before the HOA board requesting that the parking be evenly divided between guest and resident parking; however, nothing changed. Richard stated she is requesting Council's assistance in encouraging the Danbury Place homeowners to adopt the proposal which would evenly divide the parking spaces.

Pat Sever stated all the parking spaces are not properly marked. Sever stated his oversized vehicle will not fit in his garage. Sever stated the handicapped spaces do not identify whether they are for guest or homeowner; however, all the other spaces are identified as for guest.

Mayor Spitaleri inquired that if the HOA was found to not be marking the handicapped spaces properly, would the City have the right to enforce state and federal handicapped laws. Director Hom stated the state law requirements regarding handicapped parking have been discussed with Danbury Place HOA. Director Johnson explained that if the handicapped space is marked appropriately, as per state law, and a violation occurs, then Public Safety would be able to enforce the law. City Attorney Kahn explained that

assistance is available through the state and other agencies should the HOA not comply with the Americans with Disability Act (ADA) requirements.

Councilmember Swegles explained that the ADA requirements for handicapped parking spaces require that a handicapped individual with a handicapped placard may park in any handicapped space, regardless if they are a resident or guest.

Mayor Spitaleri stated he will need to go out to the site because there is confusion as to whether the handicapped spaces are identified or not.

Public hearing closed at 8:55 p.m.

Councilmember Lee inquired what the cost would be to place a bag over parking signs if Council were to allow additional parking for special events. Manager Witthaus stated he does not have an exact figure but estimates that it would cost around \$200 per event.

MOTION: Councilmember Howe moved, and Councilmember Swegles seconded, to approve Alternative 3: Council does not take action on Tasman/Fair Oaks parking issues at this time.

Councilmember Swegles requested Councilmember Howe include in his motion a suggestion that staff give the Danbury Place HOA more direction regarding handicapped parking. Councilmember Howe stated that issue is separate from his motion and should be made after his motion is voted on.

Councilmember Lee offered a friendly amendment to have the parking issues in the Tasman and Fair Oaks area looked at again in a year, at which time the entire Danbury Place project would be completely built. The parking issues being reviewed at that time would be the concerns of the residents of Danbury Place and around the Tasman area.

Councilmember Howe accepted the friendly amendment with the addition that staff will bring back their findings on the parking issues in this area as an informational item to Council in a year. Councilmember Howe stated Council can decide whether to place any issues on the agenda from the information they receive.

Councilmember Lee stated the second issue of concern is the issue of parking for the Hindu Temple area. Councilmember Lee stated placing bags over parking signs during special events will help alleviate some parking issues; however, overall the parking issues need addressing through a parking plan for the area. Councilmember Lee stated support for Council consideration of Alternative 2.

Vice Mayor Hamilton stated she would like to see the Hindu Temple follow the rules of the City. Vice Mayor Hamilton cited concerns over the Temple and the short notice – or no notice – that they have given to the City for their events. Vice Mayor Hamilton stated previously shuttle service was implemented, but the shuttle service was not successful as it was not adequately publicized. Vice Mayor Hamilton stated there are other options available without taking away bike lanes in an area where there is not adequate walking space.

Councilmember Swegles stated he supports the motion. Councilmember Swegles stated the City needs to address enforcement of protected areas. Councilmember Swegles stated some people use bike lanes to walk in and they count on those areas as being

protected. Councilmember Swegles stated parking in bike lanes for special events puts citizens at risk as they would have to walk down the middle of the street.

Restated MOTION: Councilmember Howe moved, and Councilmember Swegles seconded, to approve Alternative 3: Council does not take action on Tasman/Fair Oaks parking issues at this time

with

in April 2009, staff to review the parking issues in the Tasman and Fair Oaks area and bring back their findings as an Information Only item to Council at which time Council shall decide whether to place any issues on the agenda from the information received.

VOTE: 6-1 (Councilmember Lee dissented)

Councilmember Howe suggested that staff forward information regarding Project Sentinel to the Danbury Place HOA and that additionally the city manager and/or city attorney offer guidance on handicapped parking to the HOA, if at all possible.

3. RTC 08–106 Conduct Protest Hearing and Adoption of Resolution of Intention of the City of Sunnyvale to Levy an Annual Assessment for the Downtown Sunnyvale Business Improvement District

Administrative Analyst Maria Rodriguez presented the staff report.

Public hearing opened at 9:07 p.m.

Joel Wyrick, Executive Director of the Sunnyvale Downtown Association, thanked Council for their support during the formation of the Downtown Sunnyvale Business Improvement District (BID) and urged Council's continued support for the passage of the BID for this year.

Public hearing closed at 9:08 p.m.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded to approve Alternative 1: Council adopts the Resolution of Intention of the City of Sunnyvale to Levy an Annual Assessment for the Downtown Sunnyvale Business Improvement District.

Councilmember Lee left the dais.

Vice Mayor Hamilton verified with staff that no protests were received.

VOTE: 6-0 (Councilmember Lee absent)

Councilmember Swegles left the dais.

4. RTC 08–110 Silicon Valley Regional Interoperability Project Update and Request for Funding to Support the 2008 Emergency Communications (ECOMM) Work Plan

Director of Public Safety Don Johnson presented the staff report.

Public hearing opened at 9:12 p.m.

No speakers.

Public hearing closed at 9:12 p.m.

MOTION: Councilmember Moylan moved, and Councilmember Howe seconded, to approve Alternative 1: Council confirms to continue as a participant of Silicon Valley Regional Interoperability Project (SVRIP), and approves annual funding for the SVRIP ECOMM Project in the Department of Public Safety Operating Budget; beginning in FY 2008/09, \$13,157 for the apportioned cost of the ECOMM Executive Director. In FY 2009/10, an additional \$16,738 for partial system maintenance; and in FY 2010/11 \$24,288, inflated five percent annually, to fund complete system maintenance; and directs staff to return to Council at the end of the five-year period to ensure the funding distribution formula for system maintenance is equitable to all participating agencies.

Councilmember Lee returned to the dais.

Councilmember Moylan stated communications interoperability is a critical part of doing business. Councilmember Moylan stated although City of Sunnyvale Public Safety does not have police and fire miscommunications as they are the same entity, the City still needs good communication systems as the City is small enough that any big disaster will require that the City work with many jurisdictions.

Mayor Spitaleri spoke of communications issues during the Oakland Hills fire and how jurisdictions were not able to talk to each other over the radio. Although the ability for jurisdictions to communicate now exists, it is unfortunate it took several major disasters to address the problem.

VOTE: 6-0 (Councilmember Swegles absent)

5. RTC 08–113 Annual Review of City's Code of Ethics and Code of Conduct

Assistant City Manager Walker presented the staff report.

Councilmember Swegles returned to the dais.

Vice Mayor Hamilton verified with staff that annual review was recommended to be after the vice mayor is selected because the vice mayor is selected every year; whereas, the mayor is selected every two years.

Mayor Spitaleri verified with staff that since this item was listed as an action item for all boards and commissions, it is Council policy that only the chair, or their designee, of the board or commission may speak.

Public hearing opened (time not recorded).

Harriet Rowe wished to speak, but as a member of the Planning Commission and not the chair; Mayor Spitaleri explained to her that she would not be able to speak on this item. A discussion occurred between Rowe and the mayor (details inaudible).

Assistant City Manager Walker stated he had a conversation with Rowe regarding her questions and was hopeful that he was able to adequately address Rowe's questions on this item.

Mayor Spitaleri asked if Rowe's questions were answered. (Inaudible response.)

Mayor Spitaleri invited Rowe to speak.

Rowe stated she was out of town when Assistant City Manager Walker called, and therefore she was not able to have all her questions addressed. Rowe stated there are formatting errors in the proposed document that need correction. Rowe inquired if the City has its own parliamentary procedures or do they use *Roberts Rules of Order* as the City's parliamentary source because it is not identified on page 8 of the staff report.

Rowe addressed page 10 of the proposed report as: *Individual opinions and positions may be expressed by board and commission members regarding items that have not come before the particular board/commission to which they belong*) and asked at what time is something considered to *come before* the board?

Rowe addressed page 11 of the proposed report, and requested the word "**member**" be added to Item 1. General: *Council and board/commission "**member**" communications with City staff should be limited to normal ...*

Rowe stated she is concerned that Council will approve this document and she has concerns over procedure with this document.

Public hearing closed (time not recorded).

Assistant City Manager Walker stated staff does agree with Rowe's correction on page 11 of the proposed document.

Assistant City Manager Walker stated the parliamentarian for the City is the city attorney and the parliamentary guide used is *Sturgis*. Assistant City Manager Walker stated the reference to *Sturgis* can be specified in the proposed document.

MOTION: Councilmember Swegles moved, and Councilmember Lee seconded, to approve Alternatives 3, 4 and 6:

Alternative 3: Council revises the Code of Conduct to apply to appointed officials (board and commission members) as well as elected officials (City Council).

Alternative 4: Council combines the Code of Ethics and Code of Conduct into one document, as depicted by Attachment C, and eliminates duplicated material in the future years.

Alternative 6: Council schedules the annual review of the Code of Ethics and the Code of Conduct shortly following the selection of the vice mayor each year.

Councilmember Lee offered a friendly amendment to incorporate the change identified by the speaker in the motion for page 11, adding in "members" after *Council and board/commission ...*

Councilmember Swegles accepted the friendly amendment.

Councilmember Moylan proposed an formal amendment to the motion to add a sentence on page 7 of the proposed document under the *All Councilmember* section, and after the

sentence beginning with “No Councilmember has more power than any other Councilmembers, and ...” to add the following sentence “Therefore, no ranking or pecking order shall be established for predetermining the order of roll call votes, public introductions, etc.”

Mayor Spitaleri seconded the amendment for sake of discussion.

Councilmember Moylan explained that his reasoning for adding this text is in order to address the issues Councilmembers have had with seniority order being used for letterhead, roll call votes and when introduced in public. Councilmember Moylan stated using seniority order for these items is in direct conflict with Council’s Code of Conduct. Councilmember Moylan stated his particular concern is over the roll call vote which is taken in seniority order and allows someone the ability to know ahead of time who was going to vote next.

Mayor Spitaleri requested clarification regarding the meaning of “etc.” and Councilmember Moylan stated the degree to what “etc.” covers can be dealt with as Council sees fit at a later date. Councilmember Moylan verified that his primary concern is over the roll call vote and public introductions occurring in seniority order.

Councilmember Moylan stated the specific thing he wants to address is that the new protocols, which were initiated by staff based on their interpretation on Council’s intent, are not anything that Council passed and the “etc.” gives Council flexibility to deal with other things at a later date.

Mayor Spitaleri offered a friendly amendment to remove the text “etc.” from the sentence that is being added in Councilmember Moylan’s amendment.

Councilmember Moylan agreed to remove “etc.” from his amendment.

Mayor Spitaleri acknowledged that he does not follow any particular order when introducing Councilmembers. Mayor Spitaleri stated he will support the amendment.

Vice Mayor Hamilton offered a friendly amendment to also remove seniority order for “seat selection on the dais”.

Councilmember Moylan stated he does not accept the friendly amendment as he has no objection to seat selection based on seniority as it seems reasonable. Councilmember Moylan stated however that decision is something that can be dealt with later by Council.

FORMAL AMENDMENT: Councilmember Moylan moved, and Mayor Spitaleri seconded, to approve an amendment (as highlighted in bold) to Councilmember Swegles motion to revise Attachment C, page 7 under header “All Councilmembers” and that the first paragraph shall read as follows: “All members of the City Council, including those serving as mayor and vice mayor, have equal votes. No Councilmember has more power than any other councilmember, and all should be treated with equal respect. **Therefore no ranking or pecking order shall be established for predetermined order of roll call vote or public introductions.** All Councilmembers should ...”

VOTE: 5-2 (Councilmembers Howe and Whittum dissented)

Councilmember Whittum stated he opposes the motion as the Council does not achieve

integrity and ethics with higher piles of paper. Councilmember Whittum stated Council's goal is to reach out and hear what the board and commission members have to say to Council. Councilmember Whittum supports allowing all board and commission members the ability to speak.

Councilmember Whittum acknowledged several items in the document that he does support.

Vice Mayor Hamilton stated support for the motion and thanked the boards and commissions for their input.

Restated MOTION: Councilmember Swegles moved and Councilmember Lee seconded to approve Alternatives 3, 4 and 6:

Alternative 3: Council revises the Code of Conduct to apply to appointed officials (board and commission members) as well as elected officials (City Council).

Alternative 4: Council combines the Code of Ethics and Code of Conduct into one document, as depicted by Attachment C and eliminates duplicated material in the future years.

Alternative 6: Council schedules the annual review of the Code of Ethics and the Code of Conduct shortly following the selection of the vice mayor each year.

with

incorporate a change to page 11 of the proposed document, under Item 1 (under Heading 4: Conduct with City Staff) adding in "member" after *Council and board/commission* (***add in "member"***) *communications with City staff should be...*

VOTE: 5-2 (Councilmembers Howe and Whittum dissented)

Assistant City Manager Walker asked Council to provide clarification as to how roll call should be done in the future. Councilmember Swegles suggested the city clerk perform roll call in random order but keep track of what order she took on a previous vote. Councilmember Swegles stated the city clerk will randomly make that choice.

Vice Mayor Hamilton inquired if Council is able to have a discussion over a new method of calling for the roll call vote since this subject has not been noticed on an agenda. Councilmember Swegles stated Council did not vote on a designated way to call the order and that the city clerk will randomly call the order. City Attorney Kahn stated the order of roll call was part of the policy which was voted on and discussed as part of this item. City Attorney Kahn stated this item was already noticed on the agenda; therefore, Council may proceed in selecting a manner in which to call roll.

Vice Mayor Hamilton suggested pulling names out of a hat.

Councilmember Moylan suggested rotating the roll call vote so that it is not predictable and it will be easy for the city clerk to determine.

Councilmember Howe identified that the amendment did not give direction to staff as to who would do the roll call vote, no direction on who would be last to vote, the mayor or vice mayor, and no direction to staff as to what method would be used.

Councilmember Swegles stated in order to make it clear, the city clerk will be given the

latitude to determine the random order.

City Clerk Borkowski requested that names in a hat not be used as it would be harder to track.

City Manager Chan clarified that it is Council's preference for the city clerk to use her discretion. City Manager Chan explained to Council that when formal introductions are needed, it would be helpful for staff to have direction on the order of introductions.

Mayor Spitaleri stated if the Vice Mayor is at a formal event, he will always introduce her first, and then he introduces Council in the order that he sees them, which is completely random.

Council clarified for staff that the city clerk shall use her discretion in calling roll call votes in random order; and for public introductions, the mayor shall be introduced first, then the vice mayor followed by Councilmembers in random order.

NON-AGENDA ITEMS & COMMENTS

COUNCIL: Councilmember Lee announced he went to the opening of a new nonprofit organization called *Resource Area for Teaching* (RAFT). Councilmember Lee explained that RAFT started in Sunnyvale as a resource for teachers by providing equipment and various creative items for teachers to use in their classrooms. Councilmember Lee stated RAFT had been operating in San Jose as they required larger warehouse space; however, the organization has now moved back to Sunnyvale because they received a donated space large enough for their needs.

STAFF: City Manager Chan stated approximately one year ago, Council approved 10 sites to try out rubber sidewalks. City Manager Chan explained that staff has successfully installed the sidewalks. City Manager Chan stated a sample panel of the sidewalk is available after tonight's meeting for Council to view.

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- Draft Minutes of the Bicycle and Pedestrian Advisory Commission Meeting of March 20, 2008
- RTC 08-115 Board and Commission Resignation
- RTC 08-114 Opportunity for Council to Appeal Decisions of the Planning Commission Meeting of March 24, 2008 and the Administrative Hearing of March 31, 2008

ADJOURNMENT

Mayor Spitaleri turned the meeting over to Councilmember Swegles in order to close the meeting in honor of a former mayor's wife. Councilmember Swegles closed the meeting in memory of Phyllis Allen, wife of Charley Allen, previous Councilmember and mayor of the City of Sunnyvale. Councilmember Swegles spoke of Mrs. Allen's contributions to the community and her family.

Mayor Spitaleri called for a moment of silence and adjourned the Council meeting at 9:53 p.m.

Gail T. Borkowski

Date